

# CITY OF BURIEN, WASHINGTON

## ORDINANCE NO. 506

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AN ORDINANCE OF THE CITY OF BURIEN, REPEALING BURIEN MUNICIPAL CODE CHAPTER 14.05, SEPA PROCEDURES AND POLICIES, AND CREATING A NEW BURIEN MUNICIPAL CODE CHAPTER 14.10, STATE ENVIRONMENTAL POLICY ACT PROCEDURES, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE

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WHEREAS, pursuant to RCW 43.21C and WAC 197-11, City SEPA procedures and policies were first established in 1993 upon the official incorporation of the City; and

WHEREAS, these provisions have been amended several times since 1993; and

WHEREAS, the City wishes to have internally consistent, contemporary environmental procedures and to assure for its citizens that land development will meet the highest practical environmental standards;

WHEREAS, the City Council held a public hearing on this proposed ordinance on March 2, 2009;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1:     Repealer. Burien Municipal Code Chapter 14.05, SEPA Procedures and Policies, is hereby repealed.

Section 2:     Adoption of New Environmental Policies and Procedures. Burien Municipal Code Chapter 14.10, State Environmental Policy Act Procedures, is hereby adopted as shown on Exhibit A.

Section 3:     Severability. Should any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 4:     Savings. The enactments of this ordinance shall not affect any case, proceeding, appeal or other matter currently pending in any court or in any way modify any right or liability, civil or criminal, which may be in existence on the effective date of this ordinance.

Section 5:     Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

**ADOPTED** BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 9<sup>TH</sup> DAY OF MARCH, 2009, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 9<sup>TH</sup> DAY OF MARCH, 2009.

CITY OF BURIEN  
/s/ Joan McGilton, Mayor

ATTEST/AUTHENTICATED:  
/s/ Monica Lusk, City Clerk

Approved as to form:  
/s/ Christopher Bacha  
Kenyon Disend, PLLC  
Interim City Attorney

Filed with the City Clerk: February 18, 2009  
Passed by the City Council: March 9, 2009  
Ordinance No. 506  
Date of Publication: March 12, 2009

## **ORDINANCE 506, EXHIBIT A**

### **Burien Municipal Code Chapter 14.10 STATE ENVIRONMENTAL POLICY ACT PROCEDURES**

#### Sections:

14.10.010	Definitions and abbreviations.
14.10.020	Lead agency and responsible official.
14.10.030	Purpose and general requirements.
14.10.040	Categorical exemptions and threshold determinations.
14.10.050	Planned actions.
14.10.060	Environmental impact statements and other environmental documents.
14.10.070	Comments and public notice.
14.10.080	Use of existing environmental documents.
14.10.090	Substantive authority.
14.10.100	SEPA/GMA integration.
14.10.110	Appeals of determination of nonsignificance and adequacy of a final EIS.
14.10.120	Department procedural rules.

#### **14.10.010 Definitions and abbreviations.**

(1) The City of Burien adopts by reference the definitions contained in WAC 197-11-700 through 197-11-799. In addition, the following definitions are adopted for this chapter:

- a. "City Council" means the Burien City Council.
- b. "Department" means the City of Burien Department of Community Development.
- c. "Director" means the director of the City of Burien Department of Community Development.

(2) The following abbreviations are used in this chapter:

- a. SEPA—State Environmental Policy Act.
- b. DNS—Determination of nonsignificance.
- c. DS—Determination of significance.
- d. EIS—Environmental impact statement

#### **14.10.020 Lead agency and responsible official.**

The procedures and standards regarding lead agency responsibility contained in WAC 197-11-050 and 197-11-922 through 197-11-948 are adopted, subject to the following:

- (1) The department shall serve as the lead agency and the director shall serve as the responsible official for all SEPA activity by the City of Burien, unless otherwise designated by the city manager.

#### **14.10.030 Purpose and general requirements.**

The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-055 through 197-11-100 are adopted subject to the following:

- (1) Pursuant to WAC 197-11-055(4), the department shall adopt rules and regulations establishing a process for environmental review at the conceptual stage of permit applications that require detailed project plans and specifications.

- (2) The optional provision of WAC 197-11-060(3)(c) is adopted.
- (3) Under WAC 197-11-100, the applicant shall prepare the initial environmental checklist, unless the lead agency specifically elects to prepare the checklist. The lead agency shall make a reasonable effort to verify the information in the environmental checklist and shall have the authority to determine the final content of the environmental checklist.
- (4) The director may set reasonable deadlines for the submittal of information, studies, or documents necessary for, or subsequent to, threshold determinations. Failure to meet such deadlines shall cause the application to be deemed withdrawn, and plans or other data previously submitted for review may be returned to the applicant together with any unexpended portion of the application review fees.

**14.10.040      Categorical exemptions and threshold determinations.**

- (1) The City of Burien adopts the standards and procedures specified in WAC 197-11-300 through 197-11-390 and 197-11-800 through 197-11-890 for determining categorical exemptions and making threshold determinations subject to the following:
  - a. The following exempt threshold levels are hereby established pursuant to WAC 197-11-800(1)(c) for the exemptions in WAC 197-11-800(1)(b):
    - i. The construction or location of any residential structures of up to 20 dwelling units;
    - ii. The construction of an office, school, commercial, recreational, service, or storage building with up to 12,000 square feet of gross floor area, and with associated parking facilities designed for up to 40 automobiles;
    - iii. The construction of a parking lot designed for up to 40 automobiles;
    - iv. Any fill or excavation of up to 500 cubic yards throughout the total lifetime of the fill or excavation.
  - b. The determination of whether a proposal is categorically exempt shall be made by the department.
- (2) New residential or mixed use development within the urban center designated in the Burien Comprehensive Plan that is consistent with the goals, policies, density and intensity of use called for in the Burien Comprehensive Plan, is categorically exempt from RCW 43.21C pursuant to RCW 43.21C.229.
- (3) Review and issuance of a threshold determination shall follow the procedures for a Type 1 review pursuant to BMC 19.65.
- (4) The mitigated DNS provision of WAC 197-11-350 shall be enforced as follows:
  - a. If the department issues a mitigated DNS, conditions requiring compliance with the mitigation measures that were specified in the application and environmental checklist

shall be deemed conditions of any decision or recommendation of approval of the action.

- b. If at any time the proposed mitigation measures are withdrawn or substantially changed, the responsible official shall review the threshold determination and, if necessary, may withdraw the mitigated DNS and issue a DS.

**14.10.050 Planned actions.**

- (1) The purpose of this section is to streamline and expedite the permit review process for projects that qualify as planned actions.

- (2) Development proposals within Special Planning Area 4 as designated in the Burien Comprehensive Plan are designated to be planned actions if:

- a. The significant environmental impacts of the proposal have been adequately addressed in the Final Supplemental Environmental Impact Statement (hereafter "SEIS") prepared for the Northeast Special Planning Area issued November 12, 2002; and
- b. The proposed project includes appropriate mitigating measures included in the SEIS; and
- c. The development proposal implements the Comprehensive Plan policies relating to Special Planning Area 4; and
- d. The development proposal is for uses allowed in BMC 19.15.070, Special Planning Area 4 zone; and
- e. The project is not an essential public facility as defined in RCW 36.70A.200; and
- f. The thresholds for total development analyzed in the SEIS would not be exceeded; and
- g. The requirements of RCW 43.21C.031 and WAC 197-11-164 through 197-11-172 are met.

- (3) Planned action determination.

- a. Application. To assist the director in making his/her determination, the applicant shall submit a planned action environmental checklist and supporting information. The director shall specify the submittal requirements on a submittal checklist. Within 28 calendar days after a complete submittal, the director shall issue a written determination on whether the proposed development qualifies as a planned action pursuant to subsection (2) of this section. A request for a planned action determination shall not require the issuance of a threshold determination under SEPA, as provided by RCW 43.21C.031, WAC 197-11-172(2)(a) and this chapter.
- b. Positive Determination. If the director determines that the proposed project qualifies as a planned action, no further environmental review is required under this chapter.
- c. Negative Determination. If the director determines that the proposed project does not qualify as a planned action, the proposed project shall require additional environmental review and appropriate mitigation.

- d. Appeals. There is no administrative appeal of the director's determination to approve, conditionally approve, or deny the request to have the development processed as a planned action.
- (4) Nothing in this section limits the city from using this chapter or other applicable law to place conditions on the project in order to mitigate nonsignificant impacts through the normal project review and permitting process.

**14.10.060 Environmental impact statements and other environmental documents.**

The procedures and standards for preparation of environmental impact statements and other environmental documents pursuant to WAC 197-11-400 through 197-11-460 and 197-11-600 through 197-11-640 are adopted, subject to the following:

- (1) Pursuant to WAC 197-11-408(2)(a), all comments on determinations of significance and scoping notices shall be in writing, except where a public meeting on EIS scoping occurs pursuant to WAC 197-11-410(1)(b).
- (2) Pursuant to WAC 197-11-420, 197-11-620, and 197-11-625, the department shall be responsible for preparation and content of EISs and other environmental documents. The department shall contract with consultants as necessary for the preparation of environmental documents. The department may consider the opinion of the applicant regarding the qualifications of the consultant but the department shall retain sole authority for selecting persons or firms to author, co-author, provide special services, or otherwise participate in the preparation of required environmental documents.
- (3) Consultants or subconsultants selected by the City to prepare environmental documents for a private development proposal shall not: act as agents for the applicant in preparation or acquisition of associated underlying permits; have a financial interest in the proposal for which the environmental document is being prepared; perform any work or provide any services for the applicant in connection with or related to the proposal.
- (4) The department may establish and maintain one or more lists of qualified consultants who are eligible to receive contracts for preparation of environmental documents. Separate lists may be maintained to reflect specialized qualifications or expertise. When the department requires consultant services to prepare environmental documents, the department may select a consultant from the lists and negotiate a contract for such services, or may issue requests for qualifications and/or requests for proposals to use in the consultant selection process.
- (5) All costs of preparing the environmental document shall be borne by the applicant. The department shall promulgate administrative rules that establish procedures necessary to implement this section.
- (6) In the event an applicant decides to suspend or abandon the project, the applicant must provide formal written notice to the department and consultant. The applicant shall continue to

be responsible for all monies expended by the department or consultants to the point of receipt of notification to suspend or abandon, or other obligations or penalties under the terms of any contract let for preparation of the environmental documents.

- (7) The department shall only publish an EIS when it believes that the EIS adequately discloses: the significant direct, indirect, and cumulative adverse impacts of the proposal and its alternatives; mitigation measures proposed and committed to by the applicant, and their effectiveness in significantly mitigating impacts; mitigation measures that could be implemented or required; and unavoidable significant adverse impacts.

**14.10.070      Comments and public notice.**

- (1) The procedures and standards of WAC 197-11-500 through 197-11-570 are adopted regarding public notice and comments.
- (2) For purposes of WAC 197-11-510, public notice shall be required as indicated below:
  - a. Notification of threshold determinations for project actions shall follow the requirements for the underlying land use review in BMC 19.65 or the notice requirements of BMC Title 17, whichever is applicable. If neither of these applies, the Type 1 land use review notice requirements in BMC 19.65 shall be followed.
  - b. Notification of threshold determinations for nonproject actions shall be published in a newspaper of general circulation in the area where the proposal is located.
  - c. Notification of the issuance of a draft EIS shall follow the requirements of WAC 197-11-455.
  - d. Notification of the issuance of a final EIS shall follow the requirements of WAC 197-11-460.
  - e. Notification of the issuance of an addendum shall follow the requirements of WAC 197-11-625.
  - f. Notification of the adoption of an existing environmental document shall follow the requirements of WAC 197-11-630.
- (3) The responsible official may require further notice if deemed necessary to provide adequate public notice of a pending action. Failure to require further or alternative notice shall not be a violation of any notice procedure.

**14.10.080      Use of existing environmental documents.**

The procedures and standards of WAC 197-11-600 through 197-11-640 are adopted regarding use of existing environmental documents.

**14.10.090      Substantive authority.**

- (1) The procedures and standards of WAC 197-11-650 through 197-11-660 regarding substantive authority and mitigation, and WAC 197-11-158, regarding reliance on existing plans, laws and regulations, are adopted.

(2) For the purposes of RCW 43.21C.060 and WAC 197-11-660(a), the following policies, plans, rules and regulations, and all amendments thereto, are designated as potential bases for the exercise of the City of Burien's substantive authority under SEPA, subject to the provisions of RCW 43.21C.240 and subsection (3) of this section:

- a. The policies of the State Environmental Policy Act, RCW 43.21C.020.
- b. Burien comprehensive plan, appendices and documents referenced therein.
- c. Burien shoreline master program.
- d. Burien municipal code, including but not limited to the zoning code, surface water management code and road design & construction standards.
- e. Des Moines Memorial Drive Corridor Management Plan, January, 2005
- f. Park, Recreation and Open Space Plan, May, 2000
- g. Seahurst Park Master Plan, July, 2002
- h. Eagle Landing Park Master Plan, August, 2003

(3) Substantive SEPA authority to condition or deny new development proposals or other actions shall be used only in cases where specific adverse environmental impacts are not addressed by the regulations applicable to the proposed action, or where unusual circumstances exist. Unusual circumstances related to a site or to a proposal, as well as environmental impacts not mitigated by applicable regulations, will be subject to site-specific or project-specific SEPA mitigation.

(4) Any decision to approve, deny, or approve with conditions pursuant to RCW 43.21C.060 shall be contained in the responsible official's decision document. The written decision shall contain facts and conclusions based on the proposal's specific adverse environmental impacts (or lack thereof) as identified in an environmental checklist, EIS, threshold determination, other environmental document including a department's staff report and recommendation to a decision maker, or findings made pursuant to a public hearing authorized or required by law or ordinance. The decision document shall state the specific plan, policy or regulation that supports the SEPA decision and, if mitigation beyond existing development regulations is required, the specific adverse environmental impacts and the reasons why additional mitigation is needed to comply with SEPA.

(5) This chapter shall not be construed as a limitation on the authority of the City to approve, deny, or condition a proposal for reasons based upon other statutes, ordinances, or regulations.

**14.10.100 SEPA/GMA integration.**

The procedures and standards regarding the timing and content of environmental review specified in WAC 197-11-210 through WAC 197-11-235 are hereby adopted.

**14.10.110 Appeals of threshold determinations and adequacy of a final EIS.**



- (1) An administrative appeal pursuant to WAC 197-680(3) is allowed only for a threshold determination or adequacy of a final environmental impact statement. All other appeals under this chapter shall be made to Superior Court.
- (2) Appeals of actions under subsection (1) are procedural SEPA appeals that are conducted by the hearing examiner pursuant to the provisions of BMC 2.15 and 2.20, subject to the following:
  - a. A procedural SEPA appeal is authorized only for an action classified as a Type 1, 2 or 3 land use decision in BMC 19.65.020; a preliminary short subdivision; a preliminary subdivision; a building permit or a clearing & grading permit.
  - b. Only one appeal of each threshold determination shall be allowed on a proposal. Only one appeal of the adequacy of a final environmental impact statement shall be allowed on a proposal.
  - c. An appeal of a DNS must be filed within 14 calendar days following issuance of the DNS. The appeal period for a DNS shall be extended for an additional 7 calendar days if WAC 197-11-340(2)(a) applies.
  - d. An appeal of the adequacy of a final EIS must be filed within 21 calendar days following issuance of the notice of availability of the final EIS.
  - e. As provided in RCW 43.21C.075(3)(d), the decision of the responsible official shall be entitled to substantial weight.
  - f. The hearing examiner shall make a final decision on all procedural SEPA determinations. The hearing examiner's decision may be appealed to superior court as provided in BMC 2.20.
- (3) Except for appeal of a DS, the hearing examiner's consideration of procedural SEPA appeals shall be consolidated with:
  - a. Substantive SEPA appeals, if any, involving decisions to condition or deny an application pursuant to RCW 43.21C.060 and
  - b. With the public hearing or appeal, if any, on the proposal.
- (4) Notwithstanding the provisions of subsections (1) through (3) of this section, the department may adopt procedures under which an administrative appeal shall not be provided if the director finds that consideration of an appeal would be likely to cause the department to violate a compliance, enforcement, or other specific mandatory order or specific legal obligation. The director's determination shall be included in the notice of the SEPA determination, and the director shall provide a written summary upon which the determination is based within five days of receiving a written request. Because there would be no administrative appeal in such situations, review may be sought before a court of competent jurisdiction under RCW 43.21C.075 and applicable regulations, in connection with an appeal of the underlying governmental action.

#### **14.10.120 Department procedural rules.**

The department may prepare administrative procedural rules for the implementation of SEPA, Chapter

197-11 WAC, and this chapter.